

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**SOUTH MISSISSIPPI ELECTRIC POWER
ASSOCIATION**

PLAINTIFF

V.

CIVIL ACTION NO.3:14-CV-278-DMB-SAA

M & D COATINGS, INC.

DEFENDANT

ORDER DENYING MOTION TO COMPEL WITHOUT PREJUDICE

On April 28, 2016 defendant filed a fifth motion to compel plaintiff to respond to defendant's discovery requests propounded on February 8, 2016 and March 16, 2016. Docket 122. Plaintiff has not responded either to defendant's requests or to the motion. However, defendant did not attach a signed copy of a Good Faith Certificate or an affidavit stating that no signed certificate could be obtained. L. U. Civ. R. 37(a).

Based on the defendant's assertions the court would normally find the motion well taken. Notwithstanding, "[f]ailure to comply with . . ." the requirements of L. U. Civ. R. 37(a) or (b) "will result in a denial of the motion without prejudice to the party, who may refile the motion upon conformity with the rule." L. U. Civ. R. 37(c). Accordingly, it is

ORDERED

That defendant's motion to compel is denied without prejudice. Defendant may re-file the motion upon compliance with L. U. Civ. R. 37. The court reminds counsel for plaintiff that if the defendant does comply with the requirement of certification and is required to move again for an order directing plaintiff to respond to discovery requests, under FED. R. CIV. P. 37(a)(5),

unless failure to respond was substantially justified or sanctions would otherwise be unjust, “the court *must*, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion.”

THIS, the 17th day of May, 2016.

/s/ S. Allan Alexander
UNITED STATES MAGISTRATE JUDGE